IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.1926 OF 2004

IN

SUIT NO.93 OF 2003

...

Mafatlal Finance Co.Ltd. ...Plaintiff

v/s.

Shri K.V.Rejendran & Anr. ...Defendants

...

CORAM: D.K.DESHMUKH, J.

DATED: 29TH APRIL,2005

P.C.:

1. This Notice of Motion is taken out by the Plaintiff. The Plaintiff had given machineries on hire to the Defendant. It is not disputed by the Defendant that he is in default in payment of hire charges.

2. The only substantial objection that was raised that was to the territorial jurisdiction of this Court to entertain the suit. There is a clear recital in clause 2(b) of the agreement that payment of hire charges was to be made by the Defendant at the registered office of the Plaintiff at Bombay. On the Defendant, therefore, committing default in payment of hire charges, part of cause of action will arise in Bombay. Clause (20) clearly states that only the court in Bombay will have the jurisdiction to entertain the suit. As part of cause of action has arisen in Bombay, in view of clause 20 it is only this court which will have the territorial jurisdiction to entertain the suit.

3. The agreement is not disputed. It is also not in dispute that the Defendant has committed default in payment of hire charges. Thus, there is no option but to appoint the Receiver on the property. Motion is, therefore, granted in terms of prayer clause (a), excluding bracketed portion.

4. The Receiver shall initially take only symbolic possession of the machineries and then offer to the Defendant appointment as agent of the Receiver on usual terms and conditions including royalty and security.

5. In case the Defendant does not accept the offer and get himself appointed as agent of the Receiver on executing agency agreement within a period of six weeks from the date on which the offer is made by the Receiver to the Defendant, the Receiver shall proceed to take physical possession of the machineries, if necessary by taking police help. After taking possession of the machineries, the Receiver shall deliver the machineries in possession of the Plaintiff also as agent of the Receiver, but without royalty and security. In that event the Plaintiff shall be at liberty to offer to the court for further orders.

Till the Receiver takes possession, ad-interim order in terms of prayer clause (b) shall operate. Notice of Motion disposed of.

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